IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

RAYMOND HARNER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. N18C-05-015 JRJ
	)	
WESTFIELD INSURANCE COMPANY,	)	
	)	
	)	
Defendant.	)	

ORDER

Date Submitted: September 25, 2018
Date Decided: December 12, 2018

AND NOW TO WIT, this 12th day of December, 2018, the Court having duly considered Defendant's Motion to Dismiss,[1] and Plaintiff's Opposition and Cross-Motion for Summary Judgment[2] thereto, **IT APPEARS THAT:**

1. On September 15, 2017, the Plaintiff, Raymond Harner, ("Harner"), was involved in an accident while driving his personal motorcycle. As a result of the accident, Harner was seriously injured and his right leg had to be amputated.[3]

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[1] Westfield Insurance Company's Motion to Dismiss Plaintiff Raymond Harner's Complaint ("Op. Br."), E-File 62123032. Defendant Westfield Insurance Company's Reply Brief in Further Support of Its Motion to Dismiss Plaintiff's Complaint and in Opposition to Plaintiff's Cross-Motion for Partial Summary Judgment ("Reply Br."), E-File 62335832.

[2] Plaintiff's Response in Opposition to Defendant Westfield's Motion to Dismiss and Cross-Motion for Partial Summary Judgment ("Pl. Resp. Br."), E-File 62281447.

[3] Prior to being airlifted, a witness put Harner's right lower extremity in a tourniquet. Raymond Harner's Complaint, E-File 61980613, ¶ 5.

2. At the time of the accident, Accent Coatings LLC ("Accent"),[4] had automobile insurance coverage pursuant to a policy written and issued by the Defendant, Westfield Insurance Company ("Westfield").[5] The policy included uninsured/underinsured motorist coverage of $300,000 per person.[6] Harner is the sole owner and operator of Accent. Acting in his capacity as Accent's agent, Harner signed Accent's application for the policy.[7]

3. Following his accident, Harner submitted a demand to Westfield for underinsured motorist ("UIM") benefits on January 25, 2018. Westfield denied coverage.[8] On May 2, 2018, Harner filed suit against Westfield seeking UIM benefits and asserting breach of contract.[9]

4. Before the Court is Westfield's Motion to Dismiss[10] and Harner's Cross-Motion for Summary Judgment.[11] Westfield argues that Harner's Complaint

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[4] Pl. Resp. Br. at 2, ¶ 3.
[5] Compl. ¶ 14.
[6] *Id.*
[7] Pl. Resp. Br. Ex. C, at ¶ 3. *See also* Plaintiff's Letter to the Court Enclosing Westfield Insurance Application, E-File 62351337; Oral Arg. Tr., E-File 62522401, at 12:3-7, 12:19-23, 15:5, 30:15-19, Sept. 24, 2018.
[8] Pl. Resp. Br. at 2, ¶ 13-15.
[9] Harner also seeks declaratory judgment and punitive damages. Compl. ¶¶ 15-17.
[10] Westfield properly attached Accent Coatings LLC's operative policy to its Motion to Dismiss. *See* Op. Br. Ex. A. As a general rule, when considering a Rule 12(b)(6) motion to dismiss the Court does not consider matters outside of the pleading. *Vanderbilt Income and Growth Assoc., L.L.C. v. Arvida/JMB Managers, Inc.*, 691 A.2d 609 (Del. 1996) (citing *In re Santa Fe Pac. Corp. S'holder Litig.*, 669 A.2d 59, 68 (Del. 1995). However, there are two exceptions to this general rule: (1) when the document is integral to the plaintiff's claim and is incorporated into the complaint by reference and (2) where the document is not being relied upon to prove the truth of its contents. *Lawver v. Christiana Care Health Sys., Inc.*, 2017 WL 1167321, at *3 n.42 (Del. Super. 2017). In evaluating Westfield's 12(b)(6) motion, the Court considers the operative

should be dismissed with prejudice pursuant to Superior Court Civil Procedure Rule 12(b)(6) for failure to state a claim upon which relief can be granted and lack of standing.[12] Westfield claims Harner is not entitled to UIM benefits because the policy at issue is a commercial policy purchased by Accent, and Harner was not "occupying a covered vehicle" at the time of the accident. In opposition, Harner argues that his Complaint pleads sufficient facts to support a claim for UIM benefits and breach of contract.[13] Harner further argues that based on the doctrine of reasonable expectations, he is entitled to UIM coverage under the Accent policy.

5. When considering a motion to dismiss under Rule 12(b)(6), the Court assumes all well-pled allegations of the complaint are true.[14] The Court will not dismiss a complaint "unless the plaintiff would not be entitled to recover under any reasonable set of circumstances susceptible of proof."[15] The complaint, however,

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insurance policy because it is integral to Harner's claim and is incorporated by reference in the Complaint. *See Willis v. City of Rehoboth Beach*, 2004 WL 2419143, at *1 (Del. Super. 2004).

[11] Pl. Resp. Br., E-File 62281447. On September 24, 2018, the Court held oral arguments. *See* Oral Arg. Tr., E-File 62522401, Sept. 24, 2018.

[12] Op. Br. at 9.

[13] Harner alleges in the Complaint that: (1) he is entitled to UIM coverage and punitive damages because he duly performed all the conditions of Accent's policy, and when Westfield rejected his UIM claim, he had "no alternative but to seek redress by this Court;" (2) he is entitled to declaratory judgment under 10 *Del. C.* §§ 6501-6513; and (3) Westfield breached its contract with Accent by denying Harner's UIM claim. Compl. ¶¶ 15, 16-17, 19.

[14] *Brevet Capital Special Opportunities Fund, LP v. Fourth Third, LLC*, 2011 WL 3452821, at *6 (Del. Super. 2011) (citing *Ramunno v. Cawley*, 705 A.2d 1029, 1034 (Del. 1998)).

[15] *Brevet*, 2011 WL 3452821, at *6 (citing *Nix v. Sawyer*, 466 A.2d 407, 410 (Del. Super. 1983)).

must plead "sufficient facts to state a cognizable claim," and will be dismissed if it lacks factual or legal merit.[16]

Doctrine of Reasonable Expectations

6. The Doctrine of Reasonable Expectations states that "the [insurance] policy will be read in accordance with the reasonable expectations of the insured 'so far as its language will permit.'"[17] As the Delaware Supreme Court noted in *Hallowell v. State Farm Mut. Ins. Co.*:

> [T]he Court will look to the reasonable expectations of the insured at the time when he entered into the contract if the terms thereof are ambiguous or conflicting, or if the policy contains a hidden trap or pitfall, or if the fine print takes away that which has been given by the large print. But the doctrine is not a rule granting substantive rights to an insured when there is no doubt as to the meaning of policy language.[18]

If the Court determines that there is a discrepancy in the policy language, the Court will look to the insured's reasonable expectations.[19] But, to assert a valid claim

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[16] *See Colbert v. Goodville Mut. Cas. Co.*, 2010 WL 2636860, at *2 (Del. Super. 2010). In particular, "where the issue of standing is related to the merits, a motion to dismiss is properly considered under Rule 12(b)(6) rather than 12(b)(1)." *Stratton v. Am. Indep. Ins. Co.*, 2010 WL 3706617, at *6 (Del. Super. 2010). In *Appriva v. S'holder Litig. Co., LLC v. Eva, Inc.*, 937 A.2d 1275, 1285 (Del. 2007), the Court held that Rule 12(b)(6) is the appropriate rule when the court cannot grant relief because the plaintiff "failed to plead a necessary element of a cognizable claim."

[17] *Hallowell v. State Farm Mut. Auto. Ins. Co.*, 443 A.2d 925, 927 (Del. 1982).

[18] *Hallowell*, 443 A.2d at 927; *see also Bermel v. Liberty Mut. Fire Ins. Co.*, 56 A.3d 1062, 1071 (Del. 2012).

[19] *See Bermel v. Liberty Mut. Fire Ins. Co.*, 56 A.3d 1062, 1070-71 (Del. 2012) ("where the language in insurance contracts is unambiguous, the language is given its plain and ordinary meaning."); *see also Hallowell v. State Farm Mut. Auto. Ins. Co.*, 443 A.2d 925, 926-27 (Del. 1982) ("when the language of an insurance contract is clear and unequivocal, a party will be

under the doctrine of reasonable expectations, the plaintiff must first allege that the insurance contract is ambiguous.[20] Insurance contracts are ambiguous when the "language is reasonably susceptible to at least two different meanings."[21] Ambiguities are construed against the drafter and in favor of the insured's reasonable expectations but when the language is unambiguous the contract is interpreted by its plain and ordinary meaning.[22] Harner does not allege in his Complaint or in response to Westfield's Motion that the policy is ambiguous,[23] and his counsel admitted at oral argument that the policy is *not* ambiguous.[24] Thus, the doctrine of reasonable expectations is inapplicable here.

Limited Liability Company as a Separate Legal Entity

7. Westfield argues that Harner fails to state a claim for UIM benefits as an insured under Westfield's policy. Harner contends that his allegation, "[a]t the time of the collision, Mr. Harner was covered under a policy of insurance written

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bound by its plain meaning because creating an ambiguity where none exists could, in effect, create a new contract with rights, liabilities and duties to which the parties had not assented.").

[20] *See Bermel*, 56 A.3d at 1070-71. In *Hallowell*, the Court declined to extend the reasonable expectations doctrine to unambiguous insurance policies because to do so would "effectively overrule [*State Farm Mut. Auto. Ins. Co. v. Johnson*, 320 A.2d 345 (Del. 1974)] and almost a century of Delaware law." *Hallowell*, 443 A.2d at 927.

[21] *Bermel*, 56 A.3d at 1070.

[22] *Id.*

[23] *See generally* Compl.; *see also* Pl. Resp. Br.

[24] *See* Oral Arg. Tr., E-File 62522401, 9:10-11; 16:4. During the hearing, Harner cited *State Farm Mut. Auto. Ins. Co. v. Abramowicz*, 386 A.2d 670 (Del. 1978) for the proposition that determining reasonable expectations is not precluded by an unambiguous insurance policy. *See* Oral Arg. Tr., 9:11-13:18. After the hearing, however, Harner's counsel wrote a letter to the Court stating that the insurance policy must be interpreted. *See* Plaintiff's Letter for Judicial Review, E-File 62486739.

and issued by [Westfield]," is sufficient to assert such a claim.[25] However, Harner fails to address the fact that the policy was not held by Harner, the individual, but by Accent, the LLC, through whom Harner was covered only *while operating the designated vehicle or its temporary substitute.*[26]

8. At the time of the accident, Harner was driving his personally owned and privately-insured motorcycle for personal business.[27] Harner contends that since he is the owner of Accent he is covered by the policy because a sole proprietor would be covered, and in the context of insurance policies, the difference between a sole proprietor and an LLC is "a distinction without a difference."[28] Harner asks the Court to treat Accent as a sole proprietorship rather than a Limited Liability Company ("LLC"). But under Delaware law, an LLC is not a sole proprietorship. In a sole proprietorship, no legal distinction exists between a business and its

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[25] Pl. Resp. Br. at 4.

[26] In his Response Brief, Harner states "[t]his case falls squarely under the holding of the seminal *Castillo v. Clearwater Ins. Co.*, 8 A.3d 1177 (Del. 2010)." *See* Pl. Resp. Br. at 2-3. Then during oral arguments Harner cites *Castillo* saying "but [the plaintiff's'] *personal insurance* said you don't get this coverage unless you're bob-tailing... [the Court] had no problem saying, uh-uh, that's an exclusion that we're not going to go for, because of the policy behind 3902 which is to make sure people, persons are covered if they need that insurance." Oral Arg. Tr. at 33:2-10. In *Castillo v. Clearwater Ins. Co.*, 8 A.3d 1177 (Del. 2010), the Court held that where the plaintiff had personal insurance on his tractor-trailer cab, UIM coverage is personal to the insured and not the vehicle. The Court reasoned that the policy was personal to Castillo, the named insured, and UIM coverage applied to his use of the truck outside the scope of the policies stated coverage. *Castillo* is consistent with *Bermel*. In *Bermel*, the Court also held that a UIM policy is personal to the insured and not the vehicle covered by the policy. Therefore, *Castillo* and *Bermel* stand for the proposition that the policy is personal to Accent, the named insured, not Harner.

[27] *See* Pl.'s Answers to Form 30 Interrog., E-File 61980613, ¶ 4, supp. at 2-3 (State Of Delaware Uniform Collision Report).

[28] *See* Oral Arg. Tr., at 18:2-7, 32:11-16, 34:1-2.

owner.[29] When a sole proprietor purchases insurance through its trade name, the insurance policy is treated as if it was purchased by the individual owner.[30] Corporations and LLCs, however, are distinct legal entities and "a different situation exists when the 'named insured' is a [distinct legal entity]."[31] A policy purchased through a corporation or an LLC is the *company's* insurance policy, and the individual conducting the transaction is an agent for the business entity.[32]

9. The terms of Accent's policy[33] are very similar to those at issue in *Bermel*[34] and *Skinner*.[35] In both *Bermel* and *Skinner*, the Court held that, when the named insured is a corporation or an LLC, the "insured" is anyone occupying a covered vehicle, or replacement for the covered vehicle, at the time of the accident;

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[29] *Harleysville Mut. Ins. Co. v. Grzbowski*, 2002 WL 1859193, at *2 (Del. Super. 2002) (holding that a sole proprietorship, unlike a corporation, is not a distinct legal entity and the insurance policy purchased by the sole proprietor under his trade name provides him with personal coverage because he and the business are the same).

[30] *Id.* at *2.

[31] *Del Collo v. Houston*, 1986 WL 5841, at *3-4 (Del. Super. 1986); *see also* 6 *Del. C.* § 18-201(b).

[32] *See Del Collo*, 1986 WL 5841, at *3-4. The court reasoned that an individual who creates a corporation and contracts through the corporation cannot expect the corporation's insurance policy to extend beyond the corporation unless the policy language expressly states otherwise. This is because the individual took "the affirmative legal step of incorporating with the apparent intent of isolating *themselves* and their family from the liabilities of a corporate business entity." *Id.* at *4 (emphasis added). At the hearing, Westfield's Counsel astutely commented that Harner took the affirmative steps to form an LLC to protect himself and his personal assets and that the rule in his favor would enable him and future LLC members to use liability "shield as a sword whenever, you know, whenever it suits him." Oral Arg. Tr., at 21:6-22, 34:12-23, 35:1-2.

[33] Op. Br. Ex. B, at CA 21 10 01 14.

[34] *See Bermel*, 56 A.3d at 1071 (stating that the policy language unambiguously describes the parameters of who is covered by the policy).

[35] *See Skinner*, 2016 WL 908778, at *2. The court held that the LLC was the named insured, not the plaintiff. Therefore, the policy did not extend to the plaintiff's use of a privately owned personal vehicle.

but coverage does not extend to the personal use of a privately-insured motorcycle.[36]

10. Accent is an LLC — a distinct legal entity under Delaware law.[37] Here, the named insured is Accent and the application for the policy was signed by Harner as Accent's agent. The Court cannot ignore Accent's independent legal status.[38]

Breach of Contract

11. Harner argues Westfield breached its insurance policy contract when it denied Harner's UIM claim.[39] As previously noted, the insurance policy contract is between Westfield and Accent, not Westfield and Harner. Harner fails to plead facts sufficient to establish standing for a breach of contract claim against

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[36] *See Bermel*, 56 A.3d at 1071; *Skinner*, 2016 WL 908778, at *3.

[37] 6 *Del. C.* § 18-201(b) ("A limited liability company formed under this chapter shall be a separate legal entity…").

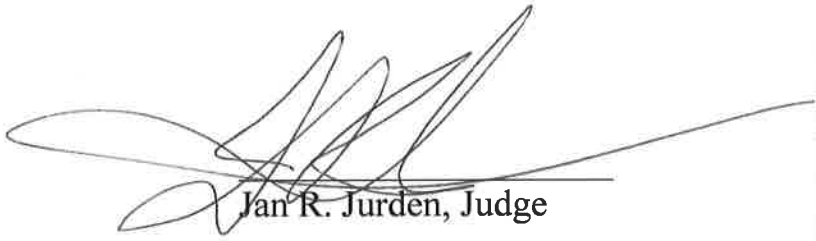
[38] In *Bermel*, 56 A.3d 1062, the Court held that Siemens Corporation, Bermel's employer, was the named insured, and that Bermel did not have reasonable expectations of coverage because the policy at issue was unambiguous. In *Skinner v. Donegal Mut. Ins. Com.*, 2016 WL 908778 (Del. Super. 2016), the Court extended the *Bermel* holding to LLCs. In both *Bermel* and *Skinner*, the insureds were legally distinct entities and the insurance policies did not cover the plaintiffs for accidents involving their personal motorcycles, which were privately insured. *See Bermel*, 56 A.3d, at 1065-66, 1068, 1071 (holding that Bermel was a designated driver under Siemens Corporation's insurance policy while driving the designated vehicle but he was not covered under the policy when driving his personal motorcycle for personal reasons); *Skinner*, 2016 WL 908778, at *1, *3 (holding that Skinner's SUV was covered by Maintenance LLC's policy, but his personal motorcycle was not covered).

[39] Compl. ¶ 19.

Westfield, and Harner never refuted Westfield's lack of standing argument in his Response to Westfield's Motion or at oral argument.[40]

WHEREFORE, Westfield's Motion to Dismiss is **GRANTED** with prejudice and Harner's Motion for Partial Summary Judgment is **DENIED**.[41]

IT IS SO ORDERED.



Jan R. Jurden, Judge

cc: Prothonotary

[40] *See generally* Pl. Resp. Br.; Oral Arg. Tr. To establish standing for a breach of an insurance policy contract claim the plaintiff must either: (1) be an insured under the policy or (2) be a third party beneficiary of the policy. *Empire Fire & Marine Ins. Co. v. Miller*, 2012 WL 1151031, at *5 (Del. Com. Pl. 2012). Here, Harner is not an insured under the policy because he is neither a named insured or driving a designated vehicle at the time of the accident. To establish contractual rights as a third party beneficiary, the plaintiff must plead that he or she was identified in the contract or plead facts that create a reasonable inference that the person was an intended beneficiary. *Delmar News, Inc. v. Jacobs Oil Co.*, 584 A.2d 531 (Del. Super. 1990). If the contracting parties did not intend for the third party to gain a benefit, then the contract does not give any rights to the third party. *Insituform of N. Am., Inc. v. Chandler*, 534 A.2d 257, 269 (Del. Ch. 1987). Here, Harner does not address whether Accent and Westfield intended Harner to receive a benefit beyond being a designated driver. Without explicit language in the policy stating otherwise, Harner is not a party to the insurance policy contract nor is he a third party beneficiary. *See Del Collo v. Houston*, 1986 WL 5841 (Del Super. 1986).

[41] The Court recognizes that Harner's injuries are severe but this is a motion to dismiss and Harner lacks standing. Delaware is a notice pleading state and the lack of detail in Harner's complaint constitutes a lack of notice.